

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAULA CARRIE ROGERS,
Plaintiff,
v.
COUNTY OF SACRAMENTO, et al.,
Defendants.

No. 2:24-cv-00475-TLN-CKD PS
ORDER
(ECF No. 35)

Plaintiff, who proceeds in this action without counsel, has filed a “Motion to Disqualify Judge Pursuant [to] 28 U.S.C. §§ 144, 455 and 636(b)(1),” and an “Objection to Court Order dated 10/09/2024.” (ECF No. 35.) Based on the title and substance of the motion, the undersigned analyzed the motion as a motion to recuse.¹ See Narayan v. County of Sacramento, No. 2:19-cv-0466 TLN CKD PS, 2021 WL 3401404, at *1 (E.D. Cal. Aug. 4, 2021). In her motion, plaintiff requests recusal of both the undersigned and Chief District Judge Troy L. Nunley. Plaintiff’s recusal motion is insufficient, and so is denied to the extent plaintiff requests recusal of the undersigned.

////

¹ In the title of plaintiff’s motion, she objects to the minute order filed on 10/9/2024 by Chief District Judge Troy L. Nunley. (ECF No. 35.) However, in plaintiff’s motion, she does not appear to actually object to the minute order, but uses it as grounds to argue for Chief District Judge Nunley’s recusal. (See id. at 16-17.)

1 Legal Standard

2 Federal law allows a judge to recuse from a matter based on a question of partiality:

3 Any justice, judge, or magistrate judge of the United States shall disqualify
4 himself in any proceeding in which his impartiality might reasonably be
5 questioned. [¶] He shall also disqualify himself . . . [¶] [w]here he has a personal
6 bias or prejudice concerning a party, or personal knowledge of disputed
7 evidentiary facts concerning the proceeding . . .

8 28 U.S.C. § 455(a), (b)(1). A party may seek recusal of a judge based on bias or prejudice:

9 Whenever a party to any proceeding in a district court makes and files a timely
10 and sufficient affidavit that the judge before whom the matter is pending has a
11 personal bias or prejudice either against him or in favor of any adverse party, such
12 judge shall proceed no further therein, but another judge shall be assigned to hear
13 such proceeding. [¶] The affidavit shall state the facts and the reasons for the
14 belief that bias or prejudice exists . . .

15 28 U.S.C. § 144. Relief under Section 144 is conditioned upon the filing of a timely and legally
16 sufficient affidavit. A judge who finds the affidavit legally sufficient must proceed no further
17 under Section 144 and must assign a different judge to hear the matter. See 28 U.S.C. § 144;
18 United States v. Sibla, 624 F.2d 864, 867 (9th Cir. 1980). Nevertheless, where the affidavit lacks
19 sufficiency, the judge at whom the motion is directed can determine the matter and deny recusal.
20 See United States v. Scholl, 166 F.3d 964, 977 (9th Cir. 1999) (citing Toth v. Trans World
21 Airlines, Inc., 862 F.2d 1381, 1388 (9th Cir. 1988) (holding that only after determining the legal
22 sufficiency of a Section 144 affidavit is a judge obligated to reassign decision on merits to
23 another judge)); United States v. \$292,888.04 in U.S. Currency, 54 F.3d 564, 566 (9th Cir. 1995)
24 (if the affidavit is legally insufficient, then recusal can be denied).

25 The standard for legal sufficiency under Sections 144 and 455 is “whether a reasonable
26 person with knowledge of all the facts would conclude that the judge’s impartiality might
27 reasonably be questioned.”” Mayes v. Leipziger, 729 F.2d 605, 607 (9th Cir. 1984) (quoting
28 United States v. Nelson, 718 F.2d 315, 321 (9th Cir. 1983)); United States v. Studley, 783 F.2d
29 934, 939 (9th Cir. 1986). To provide adequate grounds for recusal, the prejudice must result from
30 an extrajudicial source. Sibla, 624 F.2d at 868-89. A judge’s previous adverse ruling alone is not
31 sufficient for recusal. Nelson, 718 F.2d at 321.

32 ////

1 Analysis

2 To the extent plaintiff alleges bias, prejudice, and impartiality based on previous rulings
 3 against plaintiff, the motion for recusal is substantially insufficient.² (See ECF No. 35 at 12.)
 4 The motion fails to allege facts to support a contention that the undersigned has exhibited bias or
 5 prejudice directed towards plaintiff from an extrajudicial source. Sibla, 624 F.2d at 868; see
 6 Liteky v. United States, 510 U.S. 540, 555 (1994) (“[J]udicial rulings alone almost never
 7 constitute a valid basis for a bias or partiality motion.”); id. (“In and of themselves . . . [judicial
 8 rulings] cannot possibly show reliance upon an extrajudicial source; and can only in the rarest
 9 circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial
 10 source is involved. Almost invariably, they are proper grounds for appeal, not for recusal.”);
 11 Leslie v. Grupo ICA, 198 F.3d 1152, 1160 (9th Cir. 1999) (“[Plaintiff’s] allegations stem entirely
 12 from the district judge’s adverse rulings. That is not an adequate basis for recusal.”).

13 Plaintiff further alleges that the undersigned has “personal knowledge of disputed
 14 evidentiary facts concerning the proceeding” and “a financial interest in the subject matter in
 15 controversy.” (ECF No. 35 at 2.) These allegations are baseless and are founded on nothing
 16 more than speculation. See Brown v. Sagireddy, No. 2:14-cv-0338-JAM-AC P, 2015 WL
 17 5676977, at *2 (E.D. Cal. Sept. 24, 2015); Luedtke v. Ciolli, No. 1:20-cv-01148-DAD-EPG HC,
 18 2021 WL 1187267, at *2 (E.D. Cal. Mar. 30, 2021) (denying a motion for recusal that was
 19 frivolous and based on speculation); Clemens v. U.S. Dist. Court for Central Dist. of California,
 20 428 F.3d 1175, 1178-79 (9th Cir. 2005) (stating that “baseless personal attacks” against a judge
 21 are not sufficient grounds for recusal under section 455(a)). “Section 455 does not require the
 22 judge to accept all allegations by the moving party as true. If a party could force recusal of a
 23 judge by factual allegations, the result would be a virtual ‘open season’ for recusal.” United
 24 States v. Greenough, 782 F.2d 1556, 1558 (11th Cir. 1986) (citation omitted). “[A] judge, having

27

 28 ² Plaintiff does not cite a specific instance or specific ruling, however plaintiff alleges that the
 undersigned “made rulings that consistently favor government defendants due to her personal
 beliefs and relationships.” (ECF No. 35 at 12.)

1 been assigned to a case, should not recuse [her]self on unsupported, irrational, or highly tenuous
2 speculation.” Id.

3 Thus, plaintiff’s allegations are not extrajudicial, do not provide a basis for recusal, and
4 result in denial of her motion.

5 Plaintiff’s motion also objects under 28 U.S.C. § 636 to the undersigned hearing or ruling
6 on her pending motion for judgment on the pleadings. (ECF No. 35 at 14-15.) Plaintiff cites
7 28 U.S.C. § 636(b)(1)(A) and (c), as the basis for her objections. (See id.) 28 U.S.C.
8 § 636(b)(1)(A) provides that “a judge may designate a magistrate judge to hear and determine any
9 pretrial matter pending before the court, except . . . for judgment on the pleadings.” However,
10 under section 636(b)(1)(B), a magistrate judge has the authority to hear and submit “proposed
11 findings of fact and recommendations for disposition” on a judgment on the pleadings. Federal
12 Rule of Civil Procedure 72(b)(1) also explains that a “magistrate judge must promptly conduct
13 the required proceedings when assigned, without the parties’ consent, to hear a pretrial matter
14 dispositive of a claim or defense” and must enter a recommended disposition. The parties then
15 have 14 days to file any objections to the magistrate judge’s order. Fed. R. Civ. P. 72(b)(2).
16 Subsequently, the District Judge conducts a *de novo* review of the proposed findings and
17 recommendations. Fed. R. Civ. P. 72(b)(3). Further, under Local Rule 302(c)(21), a magistrate
18 judge in Sacramento performs all actions in civil matters where all “plaintiffs or defendants are
19 proceeding in propria persona, including dispositive and non-dispositive motions and matters.”
20 Therefore, the undersigned can properly hear and make a recommendation on plaintiff’s pending
21 motion for judgment on the pleadings.

22 Section 636 further provides that upon consent of the parties, a magistrate judge may
23 conduct any or all proceedings in a jury or non-jury civil matter and order entry of judgment in
24 the case, but the parties may withhold consent without adverse substantive consequences. Id.
25 § 636(c). Here, a District Judge is already assigned to this case, so any argument plaintiff makes
26 regarding section 636(c) is moot.

27 ////

28 ////

ORDER

Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to recuse (ECF No. 35) is DENIED to the extent plaintiff requests recusal of the undersigned.

Dated: October 29, 2024

Carolyn Delaney

CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

5, roge.0475.24